

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SHAHEEB LOVING,

Plaintiff,

**MOTION SCHEDULING ORDER
& NOTICE TO PRO SE PLAINTIFF**

-VS-

07-CV-6393

DONALD SELSKY, et al.,

Defendants.

On September 15, 2008, defendants Selsky, DiAngelo, Clark, McJury & Smith filed a motion for partial summary judgment; defendant Infurnari also filed a motion to dismiss, within the same document (Dkt. #30). Plaintiff is hereby advised that the defendants have asked the Court to decide this case without a trial, based on written materials, including affidavits, submitted in support of the motion. THE CLAIMS PLAINTIFF ASSERTS IN HIS COMPLAINT MAY BE DISMISSED WITHOUT A TRIAL IF HE DOES NOT RESPOND TO THIS MOTION by filing his own sworn affidavits or other papers as required by Rule 56(e). An affidavit is a sworn statement of fact based on personal knowledge that would be admissible in evidence at trial.

In short, Rule 56 provides that plaintiff may NOT oppose summary judgment simply by relying upon the allegations in the complaint. Rather, plaintiff must submit evidence, such as witness statements or documents, countering the facts asserted by the defendants and raising issues of fact for trial. Any witness statements, which may include plaintiff's own statements, must be in the form of affidavits.

Plaintiff may submit affidavits that were prepared specifically in response to defendants' motion for summary judgment and the motion to dismiss.

Any issue of fact that plaintiff wishes to raise in opposition to the motion for summary judgment or the motion to dismiss must be supported by affidavits or by other documentary evidence contradicting the facts asserted by defendants. If plaintiff does not respond to the motion for summary judgment or the motion to dismiss on time with affidavits or documentary evidence contradicting the facts asserted by defendants, the Court may accept defendants' factual assertions as true. Judgment may then be entered in defendants' favor without a trial.

Pursuant to Rules 7.1(e) and 56 of the Local Rules of Civil Procedure for the Western District of New York, plaintiff is required to submit the following papers in opposition to these motions: (1) a memorandum of law containing relevant factual and legal argument; (2) one or more affidavits in opposition to the motion; and (3) a separate, short, and concise statement of the material facts as to which plaintiff contends there exists a genuine issue to be tried. In the absence of such a statement by plaintiff, all material facts set forth in defendants' statement of material facts not in dispute will be deemed admitted. A copy of the Local Rules to which reference has been made may be obtained from the Clerk's Office of the Court.

If plaintiff has any questions, he may direct them to the *Pro Se* Office.

Plaintiff must submit any supplemental affidavits or materials in opposition to defendants' motions no later than October 17, 2008. Reply papers by the moving party must be filed no later than fifteen days following the filing of responding papers.. The Court has determined that it will not hold oral argument on the motion, but will decide the motion based the papers submitted.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER
UNITED STATES DISTRICT JUDGE

Dated: Rochester, New York
 September 17, 2008